

1 BEFORE THE BOARD OF PERSONNEL APPEALS

2 CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN

3 & HELPERS LOCAL #45

ULP-1-1976

4 Complainant,

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER.

5 vs-

6 HILL COUNTY

7 Defendant.

8 *
9 On January 6, 1976, the Chauffeurs, Teamsters, Warehousemen and Helpers,
10 Local #45, herein referred to as the Union, filed an unfair labor practice charge,
11 herein referred to as ULP No. 1, 1976, with the Montana State Board of Personnel
12 Appeals against Hill County.

13 Basically at issue in ULP No. 1, 1976, is the county's underlying reason for
14 discharging four (4) employees of the Hill County Road Department. The Union
15 maintains that the County's action was discriminatorily motivated, in violation
16 of sections 39-1603(1) and 39-1605(1)(a) and (c), R.C.M. 1947, because of the
17 union activity or sympathy of those employees; The county denies the charge and
18 answers:

19 "...that four (4) employees were laid off from work due to budget
20 problems and poor workmanship of the employees."

21 A hearing was held in the above captioned matter on March 3, 1976, in the
22 Hill County Courthouse, Revue, Montana. The Union was represented by Mr. Emile
23 Loring of the law firm of Hilley and Loring, Great Falls, Montana; Hill County
24 was represented by Mr. Ronald W. Smith, County Attorney of Hill County.

25 As the duly appointed hearing examiner of the Board of Personnel Appeals,
26 I conducted the hearing in accordance with the provisions of the Montana Admin-
27 istrative Procedures Act (Sections 82-4201 to 82-4225, R.C.M. 1947).

28 During the course of the hearing a motion was made by the defendant for
29 dismissal on the grounds that the complainant failed to make a prima facie
30 case. Upon receipt of briefs by both parties and after review of the record, I
31 dismissed the motion. The reasons for the dismissal will be made obvious in the
32 discussion of the case. In the briefs presented on the motion a point was raised

regarding rules of evidence which demands clarification. This hearing was an administrative proceeding held in accordance with the provisions of the Montana Administrative Procedures Act and the Montana Public Employees Collective Bargaining law. Mr. Smith incorrectly cites section 82-4210.

(1) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence.

The relevant statute is in fact section 5G-1607(1) which states in part:

In any hearing the board is not bound by the rules of evidence prevailing in the courts.

After thorough review of the entire record of the case, including sworn testimony of a number of witnesses, and upon consideration of briefs filed by both parties on the merits of the case, I make the following:

FINDINGS OF FACT

1.) On December 18, 1975, the Union filed a petition for a new unit determination and election for the Hill County Road Department pursuant to section 59-1606, R.C.M. 1947. The Union's petition followed an organizational meeting which was arranged by Gregory Thackery, a member of the proposed unit, and Lloyd McCormick, Secretary-Treasurer of the Union, and which was held on December 12, 1975. At that meeting a majority of the members of the proposed unit were present and authorization cards were circulated to those not present.

2.) On December 22, 1975, four members of the proposed unit were given notice of lay off, effective January 1, 1976. Gerald Chamberlain, one of the men laid off, contacted the Union which filed an unfair labor practice charge on January 6, 1976, alleging violations of sections 59-1603(1) and 59-1605(1)(a) and (e). The Union based its allegations on the assumption that the four employees were laid off because of their union activities.

3.) The four men who were laid off, Gregory Thackeray, Jerald Chamberlain, Ray Phillips and Merlin Doney were employees of the Hill County Road Department.

Mr. Thackeray had worked for the county almost four years and had worked
there longer than eight other men in the proposed unit.

Mr. Chamberlain had worked for the county almost five years and had worked
there longer than nine or ten other men in the pronounced unit.

Mr. Phillips had worked for the agency six and one-half years.

1 Mr. Doney had worked for the county almost one year.

2 4.) Mr. Dan Morse, Chairman of the Hill County Commissioners, testified
3 that the four men had been selected for discharge because of budgetary problems
4 and job performance, and the Road Foreman, Mr. Marvin Kleinjan added that also
5 considered was "their ability to get jobs and the ones that already had the income
6 coming in". The decision was made after discussions between the commissioners
7 and Mr. Kleinjan.

8 5.) Mr. Kleinjan testified that he had spoken to Mr. Thackery and Mr.
9 Chamberlain about the quality of their work, but that he had not mentioned the
10 possibility of discharge or lay off. Mr. Phillips testified that he had once been
11 reprimanded by the county commissioners. Mr. Kleinjan alleged in testimony that
12 Mr. Thackery had on two separate occasions shown negligence in his work. In
13 one case a crane boom was damaged and in the other, a battery charger was damaged.
14 In very credible rebuttal testimony Mr. Thackery pointed out that the crane
15 was damaged due to a malfunction in the equipment on which unsuccessful attempts
16 at repair had been made and that the battery charger had been damaged as he was
17 driving a piece of heavy equipment through a narrow space while being directed
18 by hand signals from the Shop Foreman, Mr. Wilbur Earl.

19 6.) Mr. Thackery was recognized by his supervisors as a spokesman for the
20 crew and as being knowledgeable about union activities. He had held discussions
21 about the union with Mr. Dan Morse and on another occasion with Mr. Marvin Kleinjan.
22 However, at no time during these discussions did these supervisors either encourage
23 or discourage union membership. In fact, at no time did the defendant's agents make
24 anti-union remarks or exhibit anti-union tendencies.

25 7.) There was no expressed or implied seniority plan established by Hill
26 County for its employees. There was no past history of winter lay offs, however
27 this year the county budget was strained because of extra equipment and machinery
28 purchases. The equipment and maintenance fund was exhausted and while the salary
29 fund was adequate these funds are not transferable. It was felt that reducing
30 the number of employees and slowing down operations would reduce the pressure on
31 the equipment and maintenance fund.

b.) Upon applying for unemployment compensation after the lay off, all four men were told they had been permanently laid off and would not be subject to rehire in the spring. Mr. Kleinjens testified that there was no provision made for rehiring these people.

9.) Mr. Denney had not read nor was he aware of the complaint filed by the Union. He was originally hired under a special program in which the state paid some or all of his wages for the first six months.

DISCUSSION

The basic determination that has to be made in ULP No. 1, 1976, is whether or not Hill County discriminated against the four employees who were laid off in an effort to discourage their membership in a labor organization.

Often, in cases where discrimination has in fact taken place, direct evidence, such as threats, coercion and promises, is difficult to obtain. It is in such cases that "reasonable inferences from evidence presented"¹ must be drawn to determine whether or not a violation has occurred.

16 Thus, in the case at hand where direct evidence is absent, the Union's
17 arguments based on circumstantial evidence must be carefully considered. Specifi-
18 cally, this evidence is:

19 The timing of the lay off. The lay off took place shortly after a petition
20 for unit determination and election was filed.

The county's inadequate explanation of reasons for the lay off. The county did not adequately explain their reasons for the lay off giving only vague and general reasons.

Faculty of indications of dissatisfaction by the county. There was little prior censure, warning, criticism or other indication of dissatisfaction by the foreman or county commissioners with the work performance of the four employees; in fact one of the reasons given for selecting these employees for lay off was "their abilities to get jobs".

29 The permanent nature of the lay off. Despite the experience and the gen-
30 erally acceptable quality of work of these employees there was no provision made
31 for their rehire.

¹²) Republic Aviation v. NLRB, 394 US 735, 16 LRRM 610 (1966).

1 The experience of the laid off employees. Three of the employees had between
2 four and six and one-half years experience with the county.

3 Union activities of the employees. At least one of the employees was active
4 in organizational work on behalf of the Union.

5 However, after carefully weighing the entire record, I find that the pre-
6 ponderance of evidence in this case does not support the allegation that it was
7 union activities on the part of the employees which resulted in their being laid
8 off. Essentially it is the employer's purpose which determines if the employer
9 is engaging in an unfair labor practice when an employer discriminates among
10 his employees, and this purpose has not been proven to have been to discourage
11 union activities, involvement or sympathy.

12 The evidence presented by the county regarding the condition of the budget
13 was not challenged by the Union and it must therefore be accepted that a shortage
14 of funds did exist and that although the salary fund was not in serious difficulty
15 the maintenance fund was exhausted and a reduction in manpower and the subsequent
16 reduction in equipment operation would result in a savings of county funds.

17 To prove this unfair labor practice violation it must be proven that em-
18 ployees were discriminated against because of union involvement or sympathy.
19 Three of the laid off employees, Jerald Chamberlain, Roy Phillips and Marie Doney,
20 were only peripherally involved with the Union and no more so than the great
21 majority of the road crew who either received union authorization cards or at-
22 tended the December 11th meeting and who have continued in the employ of the county.
23 There was no evidence that either the foreman or the county commissioners had any
24 knowledge of these employees' union activities or sympathies.

25 Also to be taken under consideration in the case of Mr. Doney is his lack
26 of knowledge of the Union's actions, the brief tenure of his employment, and the
27 nature of his hire.

28 The case of Gregory Thuckaray is somewhat more complex. He was quite active
29 with regard to the Union and was known to his supervisors as being knowledgeable
30 about union activities. Accusations of his negligence by foreman Marvin Klinjman
31 were shown to be without basis. However, in the light of the budget situation,
32 the lack of anti-union animos, and the rather arbitrary methods employed in

1 deciding which personnel would be laid off, no violation has been proven.

2 In my opinion, the filing of ULP No. 1, 1976, was the result of four
3 things:

4 The extraordinary budget situation which existed in Hill County at the time
5 of and prior to the lay off.

6 The poor management practices of Hill County. There was a great lack of
7 communication between supervisors and employees. The method of selecting those
8 employees to be laid off was quite arbitrary and did not follow seniority or any
9 other established pattern.

10 The timing of the lay off. The notice of lay off was given just four days
11 after the filing of the unit determination petition.

12 Incomplete investigation by the Union. The charge was filed by the Union
13 merely upon notification of the lay off without any investigation into the cir-
14 cumstances regarding the county's budget or the situations of the individuals
15 involved.

16 CONCLUSIONS OF LAW

17 The allegation of ULP No. 1, 1976, that Hill County has engaged in unfair
18 labor practices within the meaning of sections 59-1603(1) and 59-1605(1)(a) and
19 R.C.M. 1947, has not been sustained by the Union.

20 Hill County was exercising its prerogative to operate and manage its affairs
21 as recognized by section 59-1603(2), R.C.M. 1947.

22 RECOMMENDED ORDER

23 The unfair labor practice charge filed by the Chauffeurs, Teamsters,
24 Warehousemen and Helpers, Local #45, against Hill County of January 6, 1976, is
25 hereby dismissed.

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28 Dated this 28th day of April, 1976.


Jeff Anderson
Safety Examiner

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